

**KHOR SWEE KHIM v. PUBLIC PROSECUTOR;
 WAN BIN ABDULLAH v. PUBLIC
 PROSECUTOR.**

[C. A. (Mathew, C.J., Wilson and Taylor, JJ.)
 February 2, 1953]

[K.L. — Criminal Application No. 1 of 1953;
 Criminal Appeal No. 6 of 1953]

*Criminal procedure — Appeal against forfeiture
 of bond — Proper procedure where there is lack of
 jurisdiction of Appeal Court.*

One of two sureties whose bail were estreated by the High Court appealed against the order and the other appealed by motion for extension of time to appeal. By section 19 of the Courts Ordinance, 1948, no appeal lies where a person has not been convicted and therefore the Appeal Court has no jurisdiction to hear the appeal.

The question was whether the appeal should be rejected and the record expunged without being listed for hearing.

Held: whether or not the Appellate Court has jurisdiction ought to be argued in Court.

Case referred to:—

- (1) *R. v. Moona Hussain Maricar* (1936)
 M.L.J. 36 at p. 37.

APPEAL against forfeiture of bond.

M. S. Mahendran for the applicant.

G. H. Summerfield (Federal Counsel) for the respondent.

Cur. Adv. Vult.

The judgment of the Court was delivered by:—

Taylor, J.:—These two matters were heard together. The prisoner was committed for trial by the Magistrate at Parit Buntar and admitted to bail with two sureties. The bond was in the ordinary form, and on its face it bound the accused to attend the High Court on a specified day and the sureties to secure his attendance on that day.

On the specified day the accused did not appear. The first surety was present but not the second surety. The trial Judge estreated the recognisance of the surety who was present, and adjourned the proceedings against the others for a fortnight. The second surety, having been served with notice, was then called upon to show cause, and his bail was also estreated.

The second surety appealed against the order forfeiting the bond, and the first surety applied by Motion for extension of time to appeal.

There is no general right of appeal. Apart, possibly, from the Royal Prerogative appellate jurisdiction is solely a creation of statute, and it extends only as far as the words of the statute necessarily require. Section 19 of the Courts Ordinance, 1948 provides that the Court of Appeal shall have jurisdiction to hear

any appeal by a person convicted by the High Court in its original criminal jurisdiction, subject to certain limitations. The appellant surety had not been convicted and therefore this Court has no jurisdiction to hear his appeal.

We are aware that in some cases in recent years an appeal which appeared to be not within the jurisdiction of this Court was rejected and the record expunged without being listed for hearing. We do not think that this procedure was entirely sound; for instance, there is no appeal where the prisoner has pleaded guilty at the trial but suppose the convicted person were to say:—“True, I pleaded guilty, as appears from the record, but I have since been advised that the charge did not disclose any offence known to the law, and I therefore wish to argue that my plea was a nullity.” Manifestly, that is a question which ought to be argued in Court.

We think the true principle was stated by Terrell, J., in *R. v. Moona Mohamed Hussain Maricar*⁽¹⁾.

It is one thing to say that a memorandum of appeal is bad; it is quite a different thing to say that an instrument which is, on its face, a memorandum of appeal in due form, is not a legal memorandum of appeal. We think, therefore, that the proper order in the present case is that the appeal of Wan bin Abdullah be dismissed as incompetent.

There is obviously no point in extending the time for a similar appeal and, therefore, the application of Khor Swee Khim is dismissed.

Appeal and application dismissed.

**SAYAMPANATHAN v. MANICKAM
 CHETTIAR & ANOR.**

[C. A. (Murray-Aynsley, C.J., Mathew, C.J. (F.M.)
 and Whitton, J.) April 21, 1953]

[Singapore — Appeal No. 1 of 1953]

*Land laws — Mortgage — Sale of property by
 mortgagees — Res judicata.*

The appellant had many years ago mortgaged certain property to a Chettiar firm, M.R.M.S. Sockalingam Chettiar. In 1930, these mortgagees exercised their powers of sale and sold the property in question to the predecessor in title of the respondents. The proceeds of sale were insufficient to satisfy the claims of the mortgagees, who in Suit No. 1416 of 1931 sued the appellant for the balance owing. The appellant entered an appearance and put in a defence in which he alleged, *inter alia*, that the sale was collusive. He did not join the present respondents. The mortgagees in reply joined issue. When the case came on for hearing a lawyer who had been representing the appellant obtained his discharge, irregularly according to the then rules. The appellant was absent. The mortgagees made a formal proof of their claim and obtained judgment.